

ORDINANCE NO. 5580

AN ORDINANCE TO ESTABLISH THE BEALE STREET TOURISM DEVELOPMENT AUTHORITY PURSUANT TO TENNESSEE CODE ANNOTATED SECTION 7-69-101 ET SEQ. AND THE CHARTER OF THE CITY OF MEMPHIS, TENNESSEE

WHEREAS, Beale Street is the number one tourist attraction in the State of Tennessee and was recently named America's favorite iconic street by *USA Today*; and

WHEREAS, Beale Street is of enormous cultural and historical significance; and

WHEREAS, pursuant to the legislation known as the "Tourism Development Authority Act," codified at Tenn. Code Ann. § 7-69-101 *et seq.*, the City of Memphis is authorized to create a tourism development authority; and

WHEREAS, it is the desire of the Mayor and the Council of the City of Memphis to establish a tourism development authority to provide oversight of the development and management of that property known as the Beale Street Historic District and that property known as Handy Park, which shall be known as the Beale Street Tourism Development Authority; and

WHEREAS, the purposes of the Beale Street Tourism Development Authority shall also be to further expand the vibrancy of Beale Street with new investment and greater connectivity to the rest of Downtown Memphis;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Memphis that there be and there hereby is created a tourism development authority to be known as the Beale Street Tourism Development Authority (the "Authority"), which Authority shall, except as is otherwise provided herein, have and may exercise all the responsibilities and powers set forth in the Tourism Development Authority Act, as amended from time to time;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is declared to be a public body corporate and politic, performing a public function on behalf of the City of Memphis, a public and governmental body acting as an agency and instrumentality of the City of Memphis, and that any acquisition, operating, and/or financing of any project is declared to be for a public and governmental purpose and a matter of public necessity;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority shall provide oversight of the development and management of the interests of the City of Memphis in the Beale Street Historic District and Handy Park (collectively, the "Beale Street Properties") assigned and demised by the City of Memphis to the Authority;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is authorized and empowered, to the extent permitted by the Tourism Development Authority Act and any and all other applicable federal, state, and local laws, to act as the tourism development authority for the Beale Street Properties;

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BE IT FURTHER ORDAINED by the Council of the City of Memphis that, upon the appointment of the initial Board of Directors of the Authority, the Board of Directors shall diligently proceed to identify and retain professional and qualified development and management services for the day-to-day operations of the Beale Street Properties as well as the planning and development of the Beale Street Properties' potential with new investment and greater connectivity to the rest of Downtown Memphis;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, effective upon the appointment of the Board of Directors of the Authority, the City of Memphis Administration is empowered and authorized, pursuant to Tenn. Code Ann. § 7-69-110, to enter into a long term leasehold and management agreement (the "Management Agreement") for the Beale Street Properties, subject to the approval of the Council of the City of Memphis;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the City of Memphis shall retain its fee ownership of and all interests in the Beale Street Properties that is not assigned and demised to the Authority in the Management Agreement;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the City of Memphis may allocate solely from its share of income earned from Beale Street such amounts as it deems necessary to ensure sufficient funding to the Authority for the initial administration of the Authority;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with any and all powers, authority, immunities and benefits available to tourism development authorities pursuant to and subject to the Tourism Development Authority Act, as amended from time to time, including all powers incidental to or necessary for the performance of those powers set forth in the Tourism Development Authority Act and/or as set forth in or limited by the Management Agreement, including the power to oversee, regulate, condition, and maintain the means and methods of access to the Beale Street Properties to the extent permitted by law, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and the parties, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to acquire, whether by purchase, construction, exchange, gift, lease, or otherwise, and design, plan, site, improve, repair, extend, equip, furnish, operate, and maintain one (1) or more projects, in connection with its purposes, which projects shall be within the Beale Street Historic District and/or Handy Park, including all real and personal properties that the Board of Directors may deem necessary in connection with the projects and regardless of whether or not any such projects shall then be in existence, and including the power to demolish

any existing structures as may be on sites acquired when such structures are not needed for the project, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to appoint agents and employees, describe their qualifications, and fix their compensation, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to operate, maintain, manage, and enter into contracts for the operation, maintenance, and management of any project undertaken, and to make rules and regulations with regard to such operation, maintenance, and management, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to employ, contract with, fix the compensation of, and discharge engineering, architectural, legal, financial and other professional experts, consultants, agents and employees as may be necessary to carry out the purposes of the Authority, the Tourism Development Authority Act, and the Management Agreement, and to provide for the proper construction, operation and maintenance of any project, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to lease, rent and contract regarding the Beale Street Properties or to contract for the operation of all or any part of any project therein, and to charge and collect rent for any such properties or projects and to terminate any such lease upon the failure of the lessee to comply with any of the obligations of the lease and to include in or exclude from any such lease provisions that the lessee shall have the option to renew the term of the lease for such period or periods and at such rent as shall be determined by the Board of Directors, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to fix and collect fees and charges for the use of any and all of the projects of the Authority, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to make contracts, including, without limitation, contracts with service providers, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to sell, exchange, donate, and convey any or all of its properties, whenever the Board of Directors shall find any such action to be in furtherance of the purposes for which the Authority was organized, including all powers incidental or necessary thereto, subject to the approval of the Council of the City of Memphis, if any such property has a value of \$50,000 or more;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to procure and enter into contracts for any type of insurance or indemnity against loss or damage to property from any cause, including loss of use and occupancy, against death or injury of any person, against employer's liability, against any act of any member, officer or employee of the Authority in the performance of the duties of such person's office or employment or any other insurable risk, as the Board of Directors, in its discretion, may deem necessary, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to accept donations, contributions, revenues, capital grants or gifts from any individuals, associations, public or private corporations, and municipalities, the State of Tennessee or the United States, or any agency or instrumentality of the State of Tennessee or the United States, for or in aid of any of the purposes of the Tourism Development Authority Act and enter into agreements in connection with the donations, contributions, revenues, capital grants or gifts, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with the power to obtain such licenses, permits, approvals and accreditations as the Authority deems necessary in connection with any project, with the City of Memphis retaining its discretion to issue any such licenses, permits, approvals and accreditations in its normal course of business, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby authorized, with the consent of the Council of the City of Memphis, to borrow money from time to time and, in evidence of any obligation incurred, issue and, pursuant to Tenn. Code Ann. § 7-69-111, sell its revenue bonds in accordance with this chapter and the applicable provisions of the Local Government Public Obligations Law, codified at Tenn. Code Ann. § 9-21-101 *et seq.*, as amended from time to time, in such form and upon such terms as its Board of Directors may determine, payable out of any revenues of the Authority, including grants or contributions or other revenues specifically provided to the Authority, for the purpose of financing the cost of any project and refund and refinance, from time to time, bonds so issued and sold, as often as may be deemed to be advantageous by the Board of Directors, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby authorized, with the consent of the Council of the City of Memphis, to mortgage and pledge as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection with the bonds, any or all of the projects or any part or parts of the projects, whether then owned or thereafter acquired, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, subject to the Management Agreement, the Authority is hereby vested with the power to exercise all powers

expressly given to tourism development authorities by the Tourism Development Authority Act, as amended from time to time, and to establish bylaws and make all rules and regulations not inconsistent with the Tourism Development Authority Act, deemed expedient for the management of the affairs of the Authority, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with all the powers granted under the Tourism Development Authority Act, including but not limited to all powers incidental or necessary to participate as a joint venturer in a joint venture or as a member in a nonprofit corporation that attracts and promotes tourism or performs activities related to the exercise of any power granted to a tourism development authority, including the power to elect all or any of the members of the board of directors of any nonprofit corporation of which the Authority is a member and has the power to so elect under the nonprofit corporation's charter and bylaws, and the power to accomplish and facilitate the creation, establishment, acquisition, operation or support of any such joint venture or nonprofit corporation, by means of loans of funds, acquisition or transfer of assets, leases of real or personal property, gifts and grants of funds or guarantees of indebtedness of such joint venture or nonprofit corporation, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby authorized, with the consent of the Council of the City of Memphis, to exercise all powers granted under the Tourism Development Authority Act, including, but not limited all powers and authority incidental or necessary to issue its bonds in accordance with the Tourism Development Authority Act and in accordance with the Local Government Public Obligations Law, and for such purposes the bonds shall be treated as revenue obligations of the Authority under the Tourism Development Authority Act, in order to finance the costs of any project; the payment of the costs of issuance of such bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses; reimbursement of the Authority for moneys previously spent by the Authority for any of the foregoing purposes; and the establishment of reasonable reserves for the payment of debt service on such bonds, for repair and replacement of any project, or for such other purposes as the Board of Directors shall deem necessary and proper in connection with the issuance of any bonds and operation of any project for the benefit of which the financing is being undertaken, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby authorized, with the consent of the Council of the City of Memphis, to exercise all powers granted under the Tourism Development Authority Act, including, but not limited all powers and authority incidental or necessary to issue its bonds to refund and refinance outstanding bonds of the Authority heretofore or hereafter issued or lawfully assumed by the Authority; provided, that in accordance with the Local Government Public Obligations Law, the Authority shall request a report on any proposed refunding from the office of the comptroller. The

proceeds of the sale of the bonds may be applied to the payment of the principal amount of the bonds being refunded and refinanced; the payment of the redemption or tender premium thereon, if any; the payment of unpaid interest on the bonds being refunded, including interest in arrears, for the payment of which sufficient funds are not available, to the date of delivery or exchange of the refunding bonds; the payment of fees or other charges incident to the termination of any interest rate hedging agreements, liquidity or credit facilities, or other agreements related to the bonds being refunded and refinanced; the payment of interest on the bonds being refunded and refinanced from the date of delivery of the refunding bonds to maturity or to, and including, the first or any subsequent available redemption date or dates on which the bonds being refunded may be called for redemption; the payment of the costs of issuance of the refunding bonds, including underwriter's discount, financial advisory fee, preparation of the definitive bonds, preparation of all public offering and marketing materials, advertising, credit enhancement, and legal, accounting, fiscal and other similar expenses, and the costs of refunding the outstanding bonds, including the costs of establishing an escrow for the retirement of the outstanding bonds, trustee and escrow agent fees in connection with any escrow, and accounting, legal and other professional fees in connection therewith; and the establishment of reserves for the payment of debt service on such bonds, for repair and replacement of any project, or for such other purposes as the Board of Directors shall deem necessary and proper in connection with the issuance of any bonds and operation of any project for the benefit of which the refunding or refinancing is being undertaken;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the City of Memphis shall not shall in any event be liable for the payment of the principal of or interest on any bonds of the Authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever that may be undertaken by the Authority, and none of the bonds of the Authority or any of its agreements or obligations shall be construed to constitute an indebtedness of the City of Memphis or any other municipality within the meaning of any constitutional or statutory provision whatsoever;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, notwithstanding any of the foregoing, the Authority shall have no power to issue or require general obligation bonds, which power is held solely by the City of Memphis within its jurisdiction;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority is hereby vested with any and all other powers available to the Authority under the laws of the United States, the State of Tennessee, and the City of Memphis, and under the Management Agreement, including all powers incidental or necessary thereto;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, pursuant to the provisions of the Tourism Development Authority Act, the Directors of the Authority shall

serve without compensation, except for reimbursement of necessary expenses incurred by Directors in performance of their duties;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, pursuant to the provisions of the Tourism Development Authority Act, the Authority shall be managed by a Board of Directors, consisting of eleven (11) voting members. The voting members shall be qualified residents and voters of the City of Memphis, provided that two (2) of the eleven (11) voting members shall be owners of businesses in the Beale Street Historic District and members in good standing of the Beale Street Merchants Association ("Merchant Members"). The Merchant Members shall be members in good standing of the Beale Street Merchants Association and current on their lease agreements at the time of appointment and continuously throughout their terms of office. All voting members of the Board shall be appointed by the Mayor of the City of Memphis and submitted to the Council of the City of Memphis for approval. The Board of Directors shall also include one (1) non-voting member who shall be the Mayor of the City of Memphis, or a City official acting as the Mayor's designee, and one (1) non-voting member who shall be a member of the Council of the City of Memphis. At no time, however, shall there be fewer than six (6) voting Directors;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, pursuant to the provisions of the Tourism Development Authority Act, the initial voting Directors of the Authority shall serve staggered terms so that four (4) of the initial directors shall have initial terms of one (1) year each, three (3) of the initial directors shall have initial terms of two (2) years each and four (4) of the initial directors shall have initial terms of three (3) years each; provided, however, that the two (2) Merchant Members shall be assigned different staggered terms;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the terms of the appointed members of the Board of Directors of the Authority shall run on a calendar year basis and, after the expiration of their initial terms, their successors shall be appointed for terms of three (3) years, excepting the Mayor or mayoral designee and Council designee, who shall serve at the pleasure of the Mayor and Council of the City of Memphis, respectively. The cumulative terms of any voting Director shall, however, be limited to the term limitation imposed by City of Memphis at the time of appointment;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that when the term of office for a voting Director expires, the Mayor of the City of Memphis shall appoint and the Council of the City of Memphis approve a Director to replace such Director, provided that any Director shall continue to serve beyond the end of the Director's term until the Director's successor has been appointed, and provided that nothing herein shall be construed to prohibit the reappointment of a serving Director;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, in case of a vacancy on the Board of Directors of the Authority, the Mayor of the City of Memphis shall appoint and Council of the City of Memphis shall approve a successor to serve for the unexpired

term of said Director position, provided that a position shall be considered vacant if the Director dies, resigns, or is adjudged incompetent, and it may be declared vacant by a majority vote of the Board of Directors if a Director misses three (3) consecutive meetings;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Board of Directors of the Authority is instructed and empowered to implement the diversity plan of the City of Memphis to encourage the participation of minority-owned, women-owned, and locally-owned small businesses in the projects and activities of the Authority;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority shall, pursuant to Tenn. Code Ann. § 7-69-109, (i) cause an annual audit to be made and filed with the City of Memphis, (ii) prepare and file with the City of Memphis an annual report of its business affairs and transactions, and (iii) before the commencement of each fiscal year, adopt and file with the City of Memphis an annual fiscal year budget;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the City of Memphis may, from time to time, perform legal and financial audits of the Authority;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Authority shall, pursuant to Tenn. Code Ann. § 7-69-115, upon determination that sufficient provision has been made for the full payment of the expenses, bonds, and other obligations of the Authority, pay any remaining net earnings to the City of Memphis annually or at such other times required by the Management Agreement and used in connection with the redevelopment of Downtown Memphis, as determined by the Mayor and appropriated by the Council of the City of Memphis;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that, except with respect to the Management Agreement, in the event that the provisions of said Tourism Development Authority Act, as amended from time to time, may come into conflict with any provisions set forth herein or in any subsequent ordinances or resolutions relating to the Authority, and/or its rules and regulations, the provisions of the Tourism Development Authority Act shall control;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that whenever the Board of Directors of the Authority or the governing bodies of the City of Memphis shall by resolution determine that the purposes for which the Authority was created have been substantially accomplished, that all of the bonds and other obligations of the Authority have been fully paid or provided for, and that provision has been made for the distribution of the funds and other properties of the Authority to the City of Memphis, then the City of Memphis shall execute and file for record with the Secretary of State of the State of Tennessee a certificate of dissolution reciting those facts and declaring the Authority to be dissolved. Upon filing the certificate, the Authority shall be dissolved, and title to all funds and other properties of the Authority at the time of the dissolution shall vest in and be delivered to the City of Memphis;

ORDINANCE NO. 5580

**AN ORDINANCE TO ESTABLISH THE BEALE STREET
TOURISM DEVELOPMENT AUTHORITY PURSUANT TO TENNESSEE CODE
ANNOTATED SECTION 7-69-101 AND THE CHARTER OF THE CITY OF MEMPHIS,
TENNESSEE**

WHEREAS, Beale Street is the number one tourist attraction in the State of Tennessee and was recently named America's favorite iconic street by USA Today; and

WHEREAS, Beale Street is of enormous cultural and historical significance; and

WHEREAS, pursuant to the legislation known as the "Tourism Development Authority Act," codified at Tenn. Code Ann. § 7-69-101 et seq., the City of Memphis is authorized to create a tourism development authority; and

WHEREAS, it is the desire of the Mayor and the Council of the City of Memphis to establish a tourism development to provide oversight of the development and management authority of that property known as the Beale Street Historic District and that property known as Handy Park, which shall be known as the Beale Street Tourism Development Authority; and

WHEREAS, the purposes of the Beale Street Tourism Development Authority shall also to further expand the vibrancy of Beale Street with new investment and greater connectivity to the rest of Downtown Memphis; and

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Memphis that there be and there hereby is created a Tourism Development Authority to be known as the Beale Street Tourism Development Authority (the "Authority"), which Authority shall, except as is otherwise provided herein, have and may exercise all the responsibilities and powers set forth in Tenn. Code Ann. § 7-69-101 et seq., known as the Tourism Development Authority Act, as amended from time to time;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Beale Street Tourism Development Authority is declared to be a public body corporate and politic, performing a public function on behalf of the City of Memphis, a public and governmental body acting as an agency and instrumentality of the City of Memphis, and that any acquisition, operating, and/or financing of any project is declared to be for a public and governmental purpose and a matter of public necessity;

BE IT FURTHER ORDAINED by the Council of the City of Memphis that the Beale Street Tourism Development Authority shall provide oversight of the development and management of the interests of the City in the Beale Street Historic District and Handy Park assigned by the City to the Authority ("Beale Street Properties");

BE IT FURTHER ORDAINED by the Council of the City of Memphis that a certified copy of this Ordinance shall be filed with the Secretary of State of the State of Tennessee; and

BE IT FURTHER RESOLVED by the Council of the City of Memphis, that this Ordinance shall take effect from and after the date it shall have been passed by the Council of the City of Memphis, signed by the Chairman of the Council, certified, and delivered to the Office of Mayor in writing by the comptroller, and become effective as otherwise provided by law.

SPONSORED BY:

KEMP CONRAD

EDMUND FORD, JR.

CHAIRMAN
COUNCIL OF THE CITY OF MEMPHIS

THE FOREGOING ORDINANCE
5580 PASSED

1st Reading 2-3-15

2nd Reading 2-17-15

3rd Reading 3-3-15

Approved: *M. V. Row*
Chairman of Council

Date Signed: 3/17/2015

Approved: *[Signature]*
Mayor, City of Memphis

Date Signed: 3/20/15

I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.

Valerie C. Sripis
Comptroller